

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8949 OF 1990

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SHYAM SWAROOP JOHAR
VERSUS
CHAIRMAN ONGC & ANR.

Appearance:

MRS KA MEHTA for petitioner
MR YH VYAS for respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision:26/11/1999

C.A.V. JUDGMENT

#. Mrs. Mehta, learned counsel for the petitioner submits that this matter is squarely covered by two-three

decisions of this court as well as judgment of the Apex Court.

#. Mr.Vyas, in contra, submits that there are two other points which arise in this case which were not there in the earlier cases.

#. To appreciate the rival contentions of the learned counsel for the parties, the facts of this case are to be taken, which are as under:

The petitioner joined the services of ONGC as Assistant Driller from 17.2.65. On 30.3.79, the petitioner was promoted to the post of Senior Driller, and on 3.11.84, the petitioner came to be promoted as Deputy Superintending Engineer. A scheme was published under which the employees of ONGC can form a cooperative society and keep their lien on their respective post for three years. They had option to come back in service of ONGC. The petitioner became member of Drill Well Association Cooperative Society, Baroda, on 30.11.85. On 24.11.86, i.e. within three years, the petitioner asked for repatriation to the services of ONGC under condition 3.3 of the Scheme. Under the order dated 27.5.87 the petitioner was asked to join service of ONGC by 30th May 1987. However, as only three days' time was given for joining and as the petitioner had to settle his accounts with the Society, and he had to resign from the society, the petitioner asked for more time on 30.5.87, to join the services of ONGC. The petitioner sent reminders for giving him time to join services of ONGC and showed his inability to join the services till 30th June 1987 when the annual account of the society for year 1986-87 would have ended. To these reminders, the ONGC did not convey any decision regarding giving time to the petitioner to join the services. The petitioner, on 29.9.88, gave his joining report, i.e. within one year from the date of joining the Society, on the ground that his lien continued with ONGC. Under the order Annexure-I, dated 10.5.89, the services of the petitioner came to be terminated with effect from 5.1.89 on the ground that three years' period expired on 5.1.89. Thereafter petitioner made several representations claiming repatriation and explaining delay in joining and further prayed that if he is not allowed to repatriate, he maybe allowed to go on voluntary retirement under the scheme which came into force on 12.1.89. However, this request of the petitioner was also not acceded to under the communication dated 30.8.89, of the Regional Director, Baroda, on the ground that the petitioner did not ask for voluntary retirement before three years' period of lien

according to the scheme for Cooperative Society, but he was allowed to go on voluntary retirement under Regulation 25 of the ONGC. The petitioner once again made a representation to the Group General Manager, Baroda, dated 4.11.89, requesting that he be allowed to voluntarily retire under the scheme which has more advantages and on the ground that Regulation 25 does not apply after 12.1.89 as all the employees will be governed by voluntary retirement scheme dated 12.1.89. On 9.4.90, the representation of the petitioner dated 20th March 1990 addressed to the Member (Personnel), ONGC was rejected and the petitioner was neither allowed to join the services of ONGC nor he was allowed to voluntarily retire under the Scheme dated 12.1.89. Once again, the petitioner made claim/ representations to the authorities but the same were not replied to. Hence this special civil application before this Court.

#. Shri Vyas learned counsel for the respondent submits that the petitioner on his request was permitted to be repatriated to the Corporation services. The Corporation, under its letter dated 27th May 1987, directed him to join the services on 30th May 1987 but he has not joined within stipulated period and after more than one year and few months, he submitted his joining report. Second distinction has been given out that the petitioner has attained the age of superannuation in 1992.

#. I fail to see any justification in either of the contentions of Mr.Vyas. One of the cases on which reliance has been placed by learned counsel for the petitioner has been decided by this Court. Consistently a view has been taken that on joining the services of the society lien of its employees with the Corporation does not stand automatically terminated. In this case, it is not the case of the Corporation that the petitioner did not want to join the Corporation services. In fact, as time granted for joining the services was very short, and the petitioner has to resign from his services of the society after clearing all the accounts, naturally it took long time, he made a request to the corporation to extend time for him to join services of the Corporation. Once time has been extended, the petitioner submitted applications from time to time for further extension of time to join services on which no decision has been taken and ultimately he submitted joining report on 29th September 1988. In these facts, it is difficult to appreciate the action of the respondent-Corporation to treat his lien terminated and not to allow him to go on voluntary retirement under the scheme. The petitioner

has exercised his right of repatriation to the Corporation services within one year of his joining society's services and he has made a specific application also which has also been accepted. It is true that he has not joined the Corporation within stipulated period but his application for extension of his joining period has also not been specifically turned down. In these facts, only on this ground, the Corporation could not have taken it to be a case of termination of lien of the petitioner from the services of the Corporation and that too, to the extent of depriving him the benefit of voluntary retirement scheme.

#. So far as the fact of attaining the age of superannuation is concerned, it happened after filing of the special civil application and it is hardly of any relevance to this matter. This matter is squarely covered by decision of this Court and distinction sought to be made out on both the counts by the learned counsel for the respondents is hardly of any merits and substance.

#. In the result, this special civil application succeeds and the same is allowed and the order of the respondents to terminate the services of the petitioner under the office order dated 30th May, 1989, annexure-I, at page 63 of the special civil application on the ground that three years' period expired on 5.1.89, is quashed and set aside. As a result of quashing and setting aside of that order, the order dated 30.8.89, retiring the petitioner under Regulation 25 is declared to be illegal. The petitioner shall be entitled for all the consequential benefits follow as a result of quashing and setting aside of these two orders and which are to be given to the petitioner within a period of three months from the date of receipt of writ of this order. Rule is made absolute in aforesaid terms with no order as to costs.

.....

[sunil]